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Perdue Foods LLC d/b/a Draper Valley Farms and Teamsters Local Union No. 252 Affiliated with the International Brotherhood of Teamsters.
Case 19-RC-263822

September 9, 2020

ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN, EMANUEL
AND MCFERRAN

The Employer's Request for Immediate Stay of Mail Ballot Election is granted. The Employer's request for review of the Regional Director's Decision and Direction of Election also is granted, as it raises substantial issues warranting review.

Dated, Washington, D.C. September 9, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting.

It is well established that the mechanics of an election, including whether it is to be conducted by mail ballot, are within the discretion of the Regional Director. See *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998). The Board affords Regional Directors broad discretion to

determine the manner of conducting an election because factors relating to the site and timing of the election are "peculiarly within the Regional Director's knowledge." *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954).¹ A Regional Director's particular awareness of local matters bearing upon the administration of an election is especially relevant during this unprecedented public health crisis. COVID-19 has affected localities with varying infection rates and trends, and it has led to the curtailment of numerous social and commercial activities that vary greatly depending upon local conditions.

In this case, there is absolutely no basis to question the Regional Director's careful recitation and weighing of concerns related to the spread of COVID-19 in the geographic area of the Employer's site, and certainly no basis to conclude that he abused his discretion, in either his assessment of the seriousness of local health considerations—a matter over which the Board can claim no expertise—or his implementation of a mail ballot as an appropriate means to effectuate Section 7 rights while minimizing safety risks.²

Specifically, the Regional Director examined state and local infection rates, as well as the articulated concerns of state and local officials with respect to infection trends. He considered state and local recommendations to limit travel and other public activities. The Regional Director further took into account the travel and personal interactions that necessarily occur during a manual election, even with safety protocols in place. He also observed that the Employer had not indicated whether it regularly requires employees to wear face coverings or maintain social distancing while working. Based on all of these considerations, the Regional Director rationally concluded that an election would be best conducted by mail balloting, for the safety of both the voting participants and—just as important, in my view—for the safety of the Board employee(s) involved.

While individual Board Members might themselves have reached a different conclusion, were they on the ground and immersed in the local conditions in the affected area, that is not the standard we should apply in

¹ See also *San Diego Gas & Elec.*, above, 325 NLRB at 1144 (quoting *National Van Lines*, 120 NLRB 1343, 1346 (1958)) (noting that "'peculiar conditions'" surrounding working conditions have led the Board to "'invest[] Regional Directors with broad discretion in determining the method by which elections shall be conducted'").

² A mail ballot may be ordered where there are "extraordinary circumstances" to justify it. *San Diego Gas & Electric*, supra, 325 NLRB at 1144. And until recently, the Board routinely deferred to the soundly exercised discretion of Regional Directors in cases where mail balloting was ordered due to such "extraordinary circumstances" presented by COVID-19. See, e.g., *Antioch Tire, Inc., d/b/a TredRoc Tire Service*, Case 13-RC-263043, rev. denied 8/19/20; *Daylight Transport, LLC*, 31-RC-262633, rev. denied 8/19/20; *PACE Southeast Michigan*, Cases 07-

RC-257046 and 07-RC-257047, rev. denied 8/7/20; *SunSteel, LLC*, 19-RC-261739, rev. denied 8/4/20; *Brink's Global Services USA, Inc.*, 29-RC-260269, rev. and request denied 7/14/20; *Roseland Community Hospital*, 13-RC-259788, rev. and request denied 6/25/20; *TDS Metrocom, LLC*, 18-RC-260318, rev. denied 6/23/20; *Vistar Transportation, LLC*, 09-RC-260125, rev. denied 6/12/20; *Twinbrook Health & Rehabilitation Center*, 06-RC-257382, rev. denied 6/5/20; *Seminole Electric Cooperative, Inc.*, 12-RC-256815, rev. denied 5/28/20; *2101 LLC d/b/a Intercontinental Truck Body*, 19-RC-258144, rev. denied 5/28/20; *Roseland Community Hospital*, 13-RC-256995, rev. denied 5/26/20; *Johnson Controls*, 16-RC-256972, rev. denied 5/18/20; *Touchpoint Support Services*, 07-RC-258867, rev. denied 5/18/20; and *Atlas Pacific*, 27-RC-258742, rev. denied 5/8/20.

reviewing the Regional Director's determination. Applying the correct standard, there is simply no basis to conclude that the Regional Director "clearly abused" his discretion. *National Van Lines*, above, 120 NLRB at 1346. Accordingly, I dissent.

Dated, Washington, D.C. September 9, 2020

Lauren McFerran,

Member

NATIONAL LABOR RELATIONS BOARD